

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7164 of 1995

with

SPECIAL CIVIL APPLICATION No 2587 of 1996

with

Civil Application No. 4233 of 1996

and

Civil Application No. 7237 of 1998

in

Special Civil Application No. 2587 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

=====

1. Whether Reporters of Local Papers may be allowed

to see the judgements? Yes

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy
of the judgement?

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

PANCHBHUMI CO OP HOUSING SOCIETY LTD

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 7164 of 1995

Mr. BT Rao with MR CG SHARMA for Petitioner

Mr. UA Trivedi, AGP for Respondent No. 1, 2

2. Special Civil Application No 2587 of 1996

MR S.H. Sanjanwalla Sr. Advocate with CG SHARMA for Petitioner

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 29/08/98

ORAL COMMON JUDGEMENT

1. These two petitions are directed against the same show cause notice dated 5.8.1995 and interim order dated 5.9.1995 concerning 4047 sq.meters of land in Survey No. 40/2 of Memnagar. Petition No. 7164 of 1995 has been preferred by one Panchbhumi Cooperative Housing Society Limited and Petition No. 2587 of 1996 has been preferred by Gitaben Yugesbhai and others alleged to be the members of the said society. The petitioner in Spl.Civil Application No. 7164 of 1995 has also moved an Application being Civil Application No. 4233 of 1996 in the latter Spl. C.A. No. 2587 of 1996 to be impleaded as party alleging that only the petitioner society has right to file this petition and the petitioners claim to be the members of the society has no locus to file the petition because there existed disputes as to their membership and independent proceedings are pending before Board of nominee.

2. Mr. B.T. Rao, learned counsel for the society in the first place tried to argue on merits about dispute between the parties which is pending before Board of nominee to support their plea about want of locus standi in petitioners of SCA No. 2587/96. The issue of locus standi in the present case is of academic importance and does not affect the outcome of these petitions inasmuch as the petitioners in both the cases are challenging the validity of the same orders on identical ground and their interest in challenging the orders are ad idem. I have therefore, declined permission to the learned counsel for the society to address on the inter se dispute for

obtaining observation as to issues pending before another forum on merit. As the interest of society in setting aside the order in question cannot be doubted, application to implead as party in the Special Civil Application in aid for challenging the order is granted. However, they will not be permitted to raise dispute about the locus of petitioners to challenge the order on account of alleged dispute existing between them and keeping their own petition filed for the same reliefs alive.

3. The dispute in short is whether Survey No. 40/2 admeasuring 4047 sq.meters is of old tenure or new tenure land. The petitioners case is that the land comprised in Survey No. 40/2 is the land of old tenure and there was no prohibition against its transfer as is envisaged with respect to lands of new tenure. The show cause notice is unwarranted particularly in view of the fact that state government in its communication dated 7.4.1992, which has been given effect to by the Collector vide his communication dated 5.5.1992, has accepted the claim of the petitioners about the nature of land in question as old tenure. On the other hand, show cause notice refers to an order of the State Government dated 11.1.1994 by which the decision contained in communication dated 7.4.1992 was stayed and it also refers to an order of the government dated 26.6.1995 by which the said decision has been withdrawn. The petitioners have also challenged the validity of said orders dated 11.1.1994 and 26.6.1995 as not binding on them.

4. Be that as it may, facts stated in show cause notice itself discloses that it raised certain issues of facts which need to be investigated. It is not a case where any inherent lack of jurisdiction is alleged on the part of the Collector to initiate the proceedings and to hold inquiry into the question. Therefore, in my opinion, the petition at this stage is premature. The petitioners must respond to the show cause notice and place their case before the authority concerned and obtain an order on merits of their submissions and follow the remedies provided under law.

5. The other contention of the petitioners is that even if the Collector may be entitled to hold an inquiry into the question of the nature of land and the validity of transactions on the touchstone of finding on that issue, he had no authority to issue ex parte ad interim injunction dated 5.8.1995.

6. This contention of the learned counsel for the petitioners also cannot be accepted. If the proceedings initiated by show cause notice dated 5.8.1995 can ultimately result in eviction of occupants from the land in question and vesting thereof in the State, the authority must be deemed to have vested with power to exercise such authority in reasonable manner and to have authority to make orders on ancillary matters to achieve the object and purpose of the exercise of authority effectively.

7. The authority in aid of main object in the present case must be deemed to have necessary ancillary power to injunct the person, who has allegedly committed breach of the provisions of law in respect of land in question and exposed to forfeiture of his tenure, to protect the same by restraining him from further encumbering the land in any manner or to deal with it in any manner so as not to create new interest and further encumbrance which may cause obstruction in giving effect to the provisions of the Act expeditiously and effectively.

8. The Collector when prima facie is satisfied that the land is being used or dealt with in breach of the statutory provisions, he must be deemed to have invested with the power to restrain the occupants from further dealing with the land or the building or construction standing thereon so as to save it from being subjected to new interest or new encumbrance while proceedings for any breach of statutory provisions are initiated. In given circumstances, this power may also be exercised ex parte before service of notice by way of ad interim measure subject to the remedies after hearing the parties. Thus, to the extent the grievance of the petitioners is about the power of Collector to make ad interim ex parte order restraining the petitioners from alienating the property or creating any encumbrance is concerned, the same cannot be accepted and is hereby rejected. In fact, Mr. Sanjanwala, learned counsel appearing for petitioners in Spl. C.A. No. 2587 of 1996 who claim to be in possession of the shops in dispute accepts this position and agreed to furnish undertaking on behalf of the petitioners in Spl. C.A. No. 2587 of 1996 that they shall not alienate the shops in favour of any other person in any manner whatsoever and shall not induct anyone else in the possession of the shop and shall not alter the status quo of the shop by carrying on any construction thereon. In this connection it is clarified that they shall not induct any new party including by way of inducting new persons in partnership and maintain the status quo extending to alienation, encumbrance and construction but they shall be permitted to put the furniture and fixtures inside the shop.

9. Lastly, it was contended by learned counsel for the petitioner that at any rate without conclusion of proceedings they have been evicted from the premises. The act of the respondent Collector and his agents in putting seal over the shops amounted to eviction of all the occupants without authority of law and even before

determination of their rights in response to the show cause notice.

10. This grievance appear to be justified, as along with issuance of show cause notice and injuncting the petitioners by ex parte ad interim order, the Collector has also resorted to putting seals over the disputed shops and thus restraining effectively the petitioners from entering the shops and from enjoying the possession which they are already having. This does amount to their ouster without authority of law. That cannot be countenanced. The Collector has no authority to dispossess an occupant for alleged breach of the conditions of occupancy without determination of that issue in the proceedings initiated by him and without deciding any right after affording adequate opportunity of hearing or without satisfying that any contingency exist which authorised the competent Officer to have recourse to summary eviction without notice. The Collector or his agents are, therefore, directed to remove the seals put on the dispute shops soon after undertaking as stated above is filed in the court and information about which is given to the Collector and allow the occupants who are dispossessed by that act to occupy the same shops subject to ex parte ad interim injunction and undertaking furnished before this court. The petitioners shall furnish undertaking as stated above within one week before the Registrar of this Court to be placed on record of this petition after verification.

11. It is made clear that the reliefs against show cause notice and ex parte ad interim order has been not granted in this petition as the same are premature for consideration by this court, at this stage the petitioners shall not be precluded from raising any ground as they are otherwise entitled to in response to show cause notice including objection to ex parte ad interim injunction order and prayer for its vacation on merits.

12. These petitions, therefore, stand partly allowed as aforesaid. Rule is made absolute in each petition in terms stated above. There shall be no order as to costs.

13. In view of the order passed in the main matter, no order on Civil Application No. 7237 of 1998 and the same stands disposed of accordingly.

p.n.nair